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Third Party Communication: None

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CC:CORP:B06

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Date:

May 11, 2009

LEGEND

Distributing =

Controlled 1 =

Controlled 2 =

Controlled 3 =

Property 1 =

Property 2 =

Property 3 =

Property 4 =

Business 1 =

Business 2 =

Shareholder 1	=
Shareholder 2	=
Shareholder 3	=
Shareholder 4	=
#a	=
#b	=
#c	=
#d	=
#e	=
Date 1	=
Date 2	=
Date 3	=
State X	=

Dear :

This letter responds to your November 12, 2008, letter requesting rulings on certain federal income tax consequences of the Proposed Transaction (described below). The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distributions (described below): satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b); (ii) are used principally as a device for the distribution of the earnings and profits of the Distributing corporation or

the Controlled corporation or both (see section 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and Treas. Reg. § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the Distributing corporation or the Controlled corporation or both (see section 355(e)(2)(a)(ii) and Treas. Reg. § 1.355-7).

FACTS

Distributing is currently an S corporation formed in State X on Date 1. Distributing elected S corporation status on Date 2. Distributing has a single class of voting common stock. Shareholder 1, Shareholder 2, Shareholder 3 and Shareholder 4 are the only shareholders of Distributing. Shareholder 1 owns #a shares of Distributing voting common stock. Shareholder 2, Shareholder 3 and Shareholder 4 each own #b shares of Distributing voting common stock.

Distributing organized Controlled 1, Controlled 2 and Controlled 3 in State X on Date 3. Distributing has not transferred any assets to these Controlled corporations.

For at least the last five years Distributing has operated Business 1 and Business 2 in State X. Business 1 is performed on Property 1, Property 2 and Property 3. Business 2 is performed on Property 4.

Financial information has been received indicating that Business 1 and Business 2 has gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

PROPOSED TRANSACTION

Distributing has proposed the following transactions (collectively, the “Proposed Transaction”).

- (i) Distributing will transfer Property 1 and a portion of Property 3 to Controlled 1 in exchange for all of the Controlled 1 stock. (Controlled 1 Contribution).
- (ii) Distributing will distribute #c shares of Controlled 1 stock to Shareholder 1 in exchange for #d shares of Shareholder 1’s Distributing stock. Distributing will distribute #e shares of Controlled 1 stock to Shareholder 2 in exchange for all of Shareholder 2’s Distributing shares. Distributing will distribute all of the shares of Controlled 1 to Shareholder 1 and Shareholder 2.
- (iii) Controlled 1 will engage in Business 1 on Property 1 and Property 3.

- (iv) Controlled 1 will make an S corporation election.
- (v) Steps (i)-(ii) and (iv) will all occur at the same time.
- (vi) Distributing will transfer Property 2 and a portion of Property 3 to Controlled 2 in exchange for all of the Controlled 2 stock. (Controlled 2 Contribution).
- (vii) Distributing will distribute #c shares of Controlled 2 stock to Shareholder 1 in exchange for #d shares of Shareholder 1's Distributing stock. Distributing will distribute #e shares of Controlled 2 stock to Shareholder 3 in exchange for all of Shareholder 3's Distributing shares. Distributing will distribute all the shares of Controlled 2 to Shareholder 1 and Shareholder 3.
- (viii) Controlled 2 will engage in Business 1 on Property 2 and Property 3.
- (ix) Controlled 2 will make an S corporation election.
- (x) Steps (vi)-(vii) and (ix) will all occur at the same time.
- (xi) Distributing will transfer a portion of Property 3 to Controlled 3 in exchange for all of the Controlled 3 stock. (Controlled 3 Contribution).
- (xii) Distributing will distribute #c shares of Controlled 3 stock to Shareholder 1 in exchange for #d shares of Shareholder 1's Distributing stock. Distributing will distribute #e shares of Controlled 3 stock to Shareholder 4 in exchange for all of Shareholder 4's Distributing shares. Distributing will distribute all the shares of Controlled 3 to Shareholder 1 and Shareholder 4.
- (xiii) Controlled 3 will engage in Business 1 on Property 3.
- (xiv) Controlled 3 will make an S corporation election.
- (xv) Steps (xi)-(xii) and (xiv) will all occur at the same time.
- (xvi) Distributing will continue to engage in Business 2 on Property 4

The following representations are made with respect to the Distributions:

REPRESENTATIONS- Controlled 1 Contribution

- a) The fair market value of the Controlled 1 corporation stock and other consideration to be received by each shareholder of the Distributing corporation will be approximately equal to the fair market value of the Distributing corporation stock surrendered by the shareholder in the exchange.

- b) No part of the consideration to be distributed by the Distributing corporation will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of the corporation.
- c) The 5 years of financial information submitted on behalf of the Distributing corporation is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- d) The 5 years of financial information submitted on behalf of the business contributed to the Controlled 1 corporation is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- e) Following the transaction, the Distributing and Controlled 1 corporation will each continue the active conduct of its business, independently and with its separate employees.
- f) The distribution of the stock, or stock and securities, of the Controlled 1 corporation is carried out for the following corporate business purposes: (i) The transaction will resolve management problems that exist as a result of the president and majority shareholder wanting to step away from corporate leadership and none of the other shareholders wanting to cede that responsibility to any other shareholder. (ii) The transaction will provide greater stability and strength to the Business 1 operation on Property 1 by enabling Shareholder 2, who has managed the daily operation of that property, to focus only on that property without having to share decision making with other shareholders. (iii) The transaction will also provide greater stability and strength to the business retained by Distributing for the reason that Shareholder 1 will have the time to focus on that business instead of being concerned about Business 1 and having to resolve disputes among shareholders regarding Business 1 operations. The distribution of the stock, or stock and securities, of the Controlled 1 corporation is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- g) The transaction is not used principally as a device for the distribution of the earnings and profits of the Distributing corporation or the Controlled corporation or both. See § 355(a)(1)(B).
- h) The total adjusted basis and the fair market value of the assets transferred to Controlled 1 in the Controlled 1 Contribution will equal or exceed the sum of (i) the total liabilities assumed (within the meaning of § 357(d)) by Controlled 1, and

- (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- i) The liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in the Controlled 1 Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
 - j) The total fair market value of the assets transferred to Controlled 1 in the Controlled 1 Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 1 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 1 by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange.
 - k) The fair market value of the Assets of Controlled 1 will exceed the amount of its liabilities immediately after the exchange.
 - l) The aggregate fair market value of the assets transferred to Controlled 1 in the Controlled 1 Contribution will equal or exceed the aggregate adjusted basis of these assets.
 - m) The Distributing corporation neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
 - n) No intercorporate debt will exist between the Distributing corporation and Controlled 1 at the time of, or subsequent to, the distribution of the Controlled 1 corporation stock.
 - o) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
 - p) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in §

355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

- q) Payments made in connection with all continuing transactions, if any, between the Distributing and the Controlled 1 corporation, will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arms length.
- r) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- s) There is no acquisition of stock of the Distributing corporation or any Controlled corporation (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled 1 corporation stock.
- t) Immediately after the Distribution, neither Distributing nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

REPRESENTATIONS- Controlled 2 Contribution

- u) The fair market value of the Controlled 2 corporation stock and other consideration to be received by each shareholder of the Distributing corporation will be approximately equal to the fair market value of the Distributing corporation stock surrendered by the shareholder in the exchange.
- v) No part of the consideration to be distributed by the Distributing corporation will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of the corporation.
- w) The 5 years of financial information submitted on behalf of the Distributing corporation is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- x) The 5 years of financial information submitted on behalf of the business contributed to the Controlled 2 corporation is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.

- y) Following the transaction, the Distributing and Controlled 2 corporation will each continue the active conduct of its business, independently and with its separate employees.
- z) The distribution of the stock, or stock and securities, of the Controlled 2 corporation is carried out for the following corporate business purposes: (i) The transaction will resolve problems that exist as a result of the president and majority shareholder wanting to step away from corporate leadership and none of the other shareholders wanting to cede that responsibility to any other shareholder. (ii) The transaction will provide greater stability and strength to the Business 1 operation on Property 2 by enabling Shareholder 3, who has managed the daily operation of that property, to focus only on that property without having to share decision making with other shareholders. (iii) The transaction will also provide greater stability and strength to the business retained by Distributing for the reason that Shareholder 1 will have the time to focus on that business instead of being concerned about Business 1 and having to resolve disputes among shareholders regarding Business 1 operations. The distribution of the stock, or stock and securities, of the Controlled 2 corporation is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- aa) The transaction is not used principally as a device for the distribution of the earnings and profits of the Distributing corporation or the Controlled corporation or both. See § 355(a)(1)(B).
- bb) The total adjusted basis and the fair market value of the assets transferred to Controlled 2 in the Controlled 2 Contribution will equal or exceed the sum of (i) total liabilities assumed (within the meaning of § 357(d)) by Controlled 2, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- cc) The liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in the Controlled 2 Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- dd) The total fair market value of the assets transferred to Controlled 2 in the Controlled 2 Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 2 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 2 by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange.

- ee) The fair market value of the Assets of Controlled 2 will exceed the amount of its liabilities immediately after the exchange.
- ff) The aggregate fair market value of the assets transferred to Controlled 2 in the Controlled 2 Contribution will equal or exceed the aggregate adjusted basis of these assets.
- gg) The Distributing corporation neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- hh) No intercorporate debt will exist between the Distributing corporation and Controlled 2 at the time of, or subsequent to, the distribution of the Controlled 2 corporation stock.
- ii) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- jj) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- kk) Payments made in connection with all continuing transactions, if any, between the Distributing and the Controlled 2 corporation, will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arms length.
- ll) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- mm) There is no acquisition of stock of the Distributing corporation or any Controlled corporation (including any predecessor or successor of any such

corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled 2 corporation stock.

- nn) Immediately after the Distribution, neither Distributing nor Controlled 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

REPRESENTATIONS-Controlled 3 Contribution

- oo) The fair market value of the Controlled 3 corporation stock and other Consideration to be received by each shareholder of the Distributing corporation will be approximately equal to the fair market value of the Distributing corporation stock surrendered by the shareholder in the exchange.
- pp) No part of the consideration to be distributed by the Distributing corporation will be received by a shareholder as a creditor, employee or in any capacity other than that of a shareholder of the corporation.
- qq) The 5 years of financial information submitted on behalf of the Distributing corporation is representative of the corporation's present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.
- rr) The 5 years of financial information submitted on behalf of the business contributed to the Controlled 3 corporation is representative of the business's present operation, and with regard to such business, there have been no substantial operational changes since the date of the last financial statements submitted.
- ss) Following the transaction, the Distributing and Controlled 3 corporation will each continue the active conduct of its business, independently and with its separate employees.
- tt) The distribution of the stock, or stock and securities, of the Controlled 3 corporation is carried out for the following corporate business purposes: (i) The transaction will resolve problems that exist as a result of the president and majority shareholder wanting to step away from corporate leadership and none of the other shareholders wanting to cede that responsibility to any other shareholder. (ii) The transaction will provide greater stability and strength to the Business 1 operation on Property 3 by enabling Shareholder 4, who has managed the daily operation of that property, to focus only on that property without having to share decision making with other shareholders. (iii) The transaction will also provide greater stability and strength to the business retained by Distributing for the reason that Shareholder 1 will have the time to

focus on that business instead of being concerned about Business 1 and having to resolve disputes among shareholders regarding Business 1 operations. The distribution of the stock, or stock and securities, of the Controlled 3 corporation is motivated, in whole or substantial part, by one or more of these corporate business purposes.

- uu) The transaction is not used principally as a device for the distribution of the earnings and profits of the Distributing corporation or the Controlled corporation or both. See § 355(a)(1)(B).
- vv) The total adjusted basis and the fair market value of the assets transferred to Controlled 3 in the Controlled 3 Contribution will equal or exceed the sum of (i) total liabilities assumed (within the meaning of § 357(d)) by Controlled 3, and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing and transferred to its creditors in connection with the reorganization.
- ww) The liabilities assumed (within the meaning of § 357(d)) by Controlled 3 in the Controlled 3 Contribution were incurred in the ordinary course of business and are associated with the assets being transferred.
- xx) The total fair market value of the assets transferred to Controlled 3 in the Controlled 3 Contribution will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled 3 in connection with the exchange, (ii) the amount of any liabilities owed to Controlled 3 by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock or securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing in connection with the exchange.
- yy) The fair market value of the Assets of Controlled 3 will exceed the amount of its liabilities immediately after the exchange.
- zz) The aggregate fair market value of the assets transferred to Controlled 3 in the Controlled 3 Contribution will equal or exceed the aggregate adjusted basis of these assets.
- aaa) The Distributing corporation neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.
- bbb) No intercorporate debt will exist between the Distributing corporation and Controlled 3 at the time of, or subsequent to, the distribution of the Controlled 3 corporation stock.

- ccc) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- ddd) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 3 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 3 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.
- eee) Payments made in connection with all continuing transactions, if any, between the Distributing and the Controlled 3 corporation, will be for fair market value based on the terms and conditions arrived at by the parties bargaining at arms length.
- fff) No two parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).
- ggg) There is no acquisition of stock of the Distributing corporation or any Controlled corporation (including any predecessor or successor of any such corporation) that is part of a plan or series of related transactions (within the meaning of § 1.355-7) that includes the distribution of the Controlled 3 corporation stock.
- hhh) Immediately after the Distribution, neither Distributing nor Controlled 3 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

RULINGS-Contribution 1

Based solely on the information and representations submitted, we rule as follows on the Proposed Transaction:

- 1) The transfer by Distributing to Controlled 1 of assets in exchange for all of the outstanding stock of Controlled 1, followed by Distributing's distribution of #c shares of Controlled 1 stock to Shareholder 1 in exchange for #d shares of

Shareholder 1's Distributing stock, followed by Distributing's distribution of #e shares of Controlled 1 stock to Shareholder 2 in exchange for all of Shareholder 2's Distributing shares, will be a reorganization, within the meaning of § 368(a)(1)(D). Distributing and Controlled 1 each will be "a party to a reorganization" under § 368(b).

- 2) Distributing will not recognize any gain or loss on its transfer of property to Controlled 1 in exchange for Controlled 1 stock (§ 361(a)).
- 3) Controlled 1 will not recognize any gain or loss on the receipt of assets from Distributing in exchange for Controlled 1 stock. (§ 1032(a)).
- 4) Controlled 1's basis in each asset received from Distributing, will be the same as the basis of that asset in the hands of Distributing immediately before its transfer. (§ 362(b)).
- 5) Controlled 1's holding period in each asset received from Distributing will include the period during which Distributing held that asset. (§ 1223(2)).
- 6) Distributing will not recognize any gain or loss on the distribution of all the Controlled 1 stock to Shareholder 1 and Shareholder 2 in exchange for a portion of Shareholder 1's Distributing stock and all of Shareholder 2's Distributing stock. (§ 361(c)).
- 7) Shareholder 1 and Shareholder 2 will not recognize any gain or loss (and will not otherwise include amount in income) on their receipt of shares of Controlled 1 stock in exchange for Distributing stock. (§ 355(a)(1)).
- 8) The basis of the Controlled 1 stock in the hands of Shareholder 1 and Shareholder 2 immediately after the exchange will be the same as that shareholder's basis in the Distributing stock held and surrendered immediately before the exchange. (§ 358(a)(1)).
- 9) The holding period of the Controlled 1 stock received by Shareholder 1 and Shareholder 2 will include the holding period of the Distributing stock exchanged therefore, provided the Distributing stock is held as a capital asset on the date of the Distribution. (§ 1223(1)).
- 10) Earnings and profits, if any, will be allocated between Distributing and Controlled 1 in accordance with §§ 312(h) and § 1.312-10(a).

RULINGS-Contribution 2

- 11) The transfer by Distributing to Controlled 2 of assets in exchange for all of the outstanding stock of Controlled 2, followed by Distributing's distribution of #c shares of Controlled 2 stock to Shareholder 1 in exchange for #d shares of Shareholder 1's Distributing stock, followed by Distributing's distribution of #e shares of Controlled 2 stock to Shareholder 3 in exchange for all of Shareholder 3's Distributing shares, will be a reorganization, within the meaning of § 368(a)(1)(D). Distributing and Controlled 2 each will be "a party to a reorganization" under § 368(b).
- 12) Distributing will not recognize any gain or loss on its transfer of property to Controlled 2 in exchange for Controlled 2 stock. (§ 361(a)).
- 13) Controlled 2 will not recognize any gain or loss on the receipt of assets from Distributing in exchange for Controlled 2 stock. (§ 1032(a)).
- 14) Controlled 2's basis in each asset received from Distributing, will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
- 15) Controlled 2's holding period in each asset received from Distributing will include the period during which Distributing held that asset. (§ 1223(2)).
- 16) Distributing will not recognize any gain or loss on the distribution of all the Controlled 2 stock to Shareholder 1 and Shareholder 3 in exchange for a portion of Shareholder 1's Distributing stock and all of Shareholder 3's Distributing stock. (§ 361(c)).
- 17) Shareholder 1 and Shareholder 3 will not recognize any gain or loss (and will not otherwise include amount in income) on their receipt of shares of Controlled 2 stock in exchange for Distributing stock. (§ 355(a)(1)).
- 18) The basis of the Controlled 2 stock in the hands of Shareholder 1 and Shareholder 3 immediately after the exchange will be the same as that shareholder's basis in the Distributing stock held and surrendered immediately before the exchange. (§ 358(a)(1)).
- 19) The holding period of the Controlled 2 stock received by Shareholder 1 and Shareholder 3 will include the holding period of the Distributing stock exchanged therefore, provided the Distributing stock is held as a capital asset on the date of the Distribution. (§ 1223(1)).
- 20) Earnings and profits, if any, will be allocated between Distributing and Controlled 2 in accordance with §§ 312(h) and § 1.312-10(a).

RULINGS-Contribution 3

- 21) The transfer by Distributing to Controlled 3 of assets in exchange for all of the outstanding stock of Controlled 3, followed by Distributing's distribution of #c shares of Controlled 3 stock to Shareholder 1 in exchange for #d shares of Shareholder 1's Distributing stock, followed by Distributing's distribution of #e shares of Controlled 3 stock to Shareholder 4 in exchange for all of Shareholder 4's Distributing shares, will be a reorganization, within the meaning of § 368(a)(1)(D). Distributing and Controlled 3 each will be "a party to a reorganization" under § 368(b).
- 22) Distributing will not recognize any gain or loss on its transfer of property to Controlled 3 in exchange for Controlled 3 stock (§ 361(a)).
- 23) Controlled 3 will not recognize any gain or loss on the receipt of assets from Distributing in exchange for Controlled 3 stock. (§ 1032(a)).
- 24) Controlled 3's basis in each asset received from Distributing, will be the same as the basis of that asset in the hands of Distributing immediately before its transfer (§ 362(b)).
- 25) Controlled 3's holding period in each asset received from Distributing will include the period during which Distributing held that asset. (§ 1223(2)).
- 26) Distributing will not recognize any gain or loss on the distribution of all the Controlled 3 stock to Shareholder 1 and Shareholder 4 in exchange for a portion of Shareholder 1's Distributing stock and all of Shareholder 4's Distributing stock. (§ 361(c)).
- 27) Shareholder 1 and Shareholder 4 will not recognize any gain or loss (and will not otherwise include amount in income) on their receipt of shares of Controlled 3 stock in exchange for Distributing stock. (§ 355(a)(1)).
- 28) The basis of the Controlled 3 stock in the hands of Shareholder 1 and Shareholder 4 immediately after the exchange will be the same as that shareholder's basis in the Distributing stock held and surrendered immediately before the exchange. (§ 358(a)(1)).
- 29) The holding period of the Controlled 3 stock received by Shareholder 1 and Shareholder 4 will include the holding period of the Distributing stock exchanged therefore, provided the Distributing stock is held as a capital asset on the date of the Distribution. (§ 1223(1)).

- 30) Earnings and profits, if any, will be allocated between Distributing and Controlled 3 in accordance with §§ 312(h) and § 1.312-10(a).
- 31) Based upon the facts submitted and the representations made we conclude the momentary ownership by Distributing of the stock of the Controlled corporations, as part of the reorganization under § 368(a)(1)(D), will not cause the Controlled corporations to have ineligible shareholders for any portion of their first taxable year under § 1361(b)(1)(B). If each Controlled corporation otherwise meets the requirements of § 1361(b)(1), each Controlled corporation will be eligible to make an election under § 1362(a) to be classified as a subchapter S corporation for the first taxable year such election is made effective immediately after the distribution.

CAVEATS

We express no opinion about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings. In particular, no opinion is expressed regarding:

- (i) Whether the Distributions satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b);
- (ii) Whether the Distributions are being used principally as a device for the distribution of earnings and profits of Distributing or Controlled. (see section 355(a)(1)(B) and Treas. Reg. § 1.355-2(d));
- (iii) Whether the Distributions are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or Controlled (see section 355(e) and Treas. Reg. § 1.355-7).
- (iv) Whether Distributing is a valid S corporation, or whether Controlled 1, Controlled 2, or Controlled 3 is otherwise eligible to be an S corporation.

PROCEDURAL STATEMENT

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement

by attaching a statement to their return that provides the date and control number of this letter ruling.

Sincerely,

Richard M. Heinecke
Assistant to the Branch Chief, Branch 6
Office of Associate Chief Counsel (Corporate)